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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

AUG 22 1996

Federal Communications Commission
Office of Secretary

In the Matter of

Rulemaking to Amend Parts 1, 2, 21 and 25
of the Commission's Rules to Redesignate
the 27.5-29.5 GHz Frequency Band, to
Reallocate the 29.5-30.0 GHz Frequency Band,
to Establish Rules and Policies for Local
Multipoint Distribution Service and for
Fixed Satellite Services

CC Docket No. 92-297

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To: The Commission

REPLY COMMENTS OF THE AD HOC RURAL TELECOMMUNICATIONS GROUP

The Ad Hoc Rural Telecommunications Group ("RTG"), by its attorneys, respectfully submits these Reply Comments in response to Comments filed pursuant to the *Fourth Notice of Proposed Rulemaking* ("NPRM"), released by the Federal Communications Commission ("FCC" or "Commission") on July 22, 1996, in CC Docket No. 92-297.

RTG opposes any general limitations on local exchange carrier ("LEC") eligibility to acquire Local Multipoint Distribution Service ("LMDS") licenses, and strenuously opposes any limitation on rural telephone company eligibility in particular. As many commenters correctly note, in rural areas, the incumbent operators may be the only seriously interested and best providers of LMDS.¹ Therefore, as RTG detailed in its Comments, if the Commission does impose restrictions on LEC eligibility, it should make an exception for

¹ See, Comments of the National Telephone Cooperative Association ("NTCA") at 3; Comments of U S West, Inc. ("U S West") at 4; Comments of the United States Telephone Association ("USTA") at 6.

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telephone companies serving rural areas, and should award such rural LECs preferential auction treatment pursuant to the Commission's obligations under Sections 309(j)(3)(A) and (B) of the Communications Act of 1934, as amended, to ensure that rural populations have access to advanced telecommunications services and that rural telephone companies have an opportunity to provide new and advanced services.

I. Unlike Other Services, LMDS Can Be Used to Provide Either Video or Telephony in an Increasingly Competitive Environment.

As the Commission and almost all the commenters have noted, LMDS potentially can be used for a broad array of services. Yet, those commenters who oppose open eligibility focus their analysis almost exclusively on the purported dangers of incumbent LECs acquiring LMDS licenses and offering only limited telephony, or cable operators acquiring LMDS licenses and offering only limited video services. These commenters ignore the competitive and public benefits that would result, especially in rural areas, from LECs and cable operators using LMDS technology to compete with each other or to provide expanded or entirely new services.²

The Commission wisely has noted that it cannot yet foresee all the potential services that could be offered through LMDS. In rural areas, the best possible use of LMDS may be to expand a rural telephone company's existing service area or to offer rural customers advanced services which would otherwise only be available to residents of urban areas.

WebCel Communications, Inc. ("WebCel") admits that social costs arise from "bidding

² Even SkyOptics, Inc. who opposes LEC eligibility, concedes that LECs and cable operators are "eager" to enter each other's markets. SkyOptics Comments at 7-8.

eligibility restriction if the optimal use of LMDS is as a complement to (rather than a substitute for) existing...services.”³

In support of their pleas for restricted eligibility, the commenters who seek to limit LMDS participation cite past Commission rules which in some way limited the eligibility of certain providers to compete for a license for a new service. Unfortunately, these commenters rely on limitations that have been modified or removed -- limitations imposed under a regulatory scheme that was less competitive and in a time when telecommunications providers of every kind faced less competition.

For example, the Competition Policy Institute (“CPI”) and WebCel argue that the Commission “made existing cellular companies ineligible for certain PCS licenses,” (CPI Comments at 9) or imposed “a special restriction on cellular licensees.” (WebCel Comments at 13). However, as a result of the *Cincinnati Bell Telephone Co. v. FCC* decision,⁴ the Commission *eliminated* its cellular/PCS cross-ownership ban and 40 MHz Personal Communications Service (“PCS”) spectrum cap in favor of the general 45 MHz Commercial Mobile Radio Service (“CMRS”) spectrum cap applicable to all CMRS licensees.⁵

³ WebCel Comments at 16

⁴ 69 F. 3d 752 (6th Cir. 1995)

⁵ *Amendment of Parts 20 and 24 of the Commission’s Rules--Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap; Amendments of the Commission’s Cellular/PCS Cross-Ownership Rule*, Report and Order, WT Docket No. 96-59, GN Docket No. 90-314 (rel June 24, 1996) *The spectrum cap is once again is being challenged as too restrictive. See Cincinnati Bell Telephone Company v. FCC, Case No. 96-3756 (6th Cir. filed July 5, 1996).*

II. Winning Auction Bidders Have No Incentive to Warehouse Spectrum.

WebCel argues that, rather than competing against each other, both LECs and cable operators will decide on a “no entry” stalemate” while also arguing that they will “preempt” other entrants by acquiring and warehousing spectrum.⁶ Yet absent illegal collusion between the two, one of these players will have to spend hundreds of millions of dollars to “warehouse” the spectrum while the other entity gets a free ride. For example if the LEC purchases the LMDS spectrum only to warehouse it, the LEC will tie-up vital capital, further putting itself at risk to other competitors such as CAPs, IXC, fixed wireless CMRS and PCS providers, and even its free-riding incumbent cable operator counterpart. This scheme simply makes no sense. Rural telephone companies especially do not have the wherewithal to bury capital.

Moreover, a sensible cable operator would not sit back and watch the incumbent LEC purchase an LMDS license -- admittedly an ideal tool to provide video services -- in the hope that the LEC will merely put the spectrum out to pasture for some non-competitive use. The sensible operator will make market decisions and compete vigorously for the LMDS license.

CONCLUSION

Restricting eligibility of rural telephone companies would hamper the ability of rural America to receive high-quality, innovative LMDS services in a timely fashion, and would

⁶ WebCel Comments at 16,17.

violate the Commission's obligations under the Communications Act of 1934 to ensure that rural telephone companies receive sufficient opportunities to provide new and advanced telecommunications services. Because LMDS can be used to provide many different services including video and telephony, competition will be vigorous, and winning bidders will have no incentive to warehouse spectrum. Thus, RTG respectfully requests that the Commission allow open LEC eligibility or in the alternative, and at a minimum, allow and encourage rural telephone companies to acquire LMDS licenses.

Respectfully submitted,

AD HOC RURAL TELECOMMUNICATIONS GROUP

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August 22, 1996

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I, Caroline Hill, an employee of the Law Offices of Bennet & Bennet, PLLC, certify that on this 22nd day of August, 1996, I mailed by United States mail, postage prepaid, a copy of the foregoing "Reply Comments of Ad Hoc Rural Telecommunications Group" to the following:

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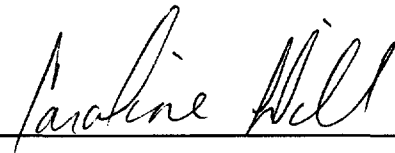
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